

Part 5 C

Protocol on Member / Officer Relations

Part 5C - Protocol on Member/Officer Relations

General

1. The fundamental principles are:
 - (a) The County Council is a democratically-elected local authority delivering a range of services to the people of Leicestershire.
 - (b) The County Council is a single entity, a statutory corporate body.
 - (c) In everything they do, the elected members and officers of the County Council are obliged to act within the law and in compliance with relevant standards and codes of conduct.
 - (d) All elected members of the County Council are ultimately accountable to the people of Leicestershire through the ballot box for their actions as County Councillors.
 - (e) The Political Administration of the day, whether joint or single, is ultimately politically accountable for the effectiveness and delivery of those of its policies and plans which have been approved by the County Council and will, therefore, have an interest in ensuring that services are delivered by the officers in accordance with those approved policies and plans.
 - (f) The officers serve the whole County Council as a single statutory corporate body.
 - (g) The officers will provide adequate support to all elected members in their local or representational rôle.
 - (h) Dealings between elected members and officers should be based on mutual trust and respect.
2. Although the Executive, Overview and Scrutiny, and Regulatory areas of activity might give the appearance of being in some way separate and differentiated from one another, in reality they are just aspects of the County Council as a single statutory corporate body.
3. Derived from the fundamental principles that officers serve the County Council as a whole and are obliged to act within the law and in compliance with relevant standards and codes of conduct, the following working principles apply, within the political context of the County Council and the Leader and Cabinet model:

Part 5C

- (a) The interests of the County Council are best served where there is mutual confidence and trust between all elected members and officers;
- (b) Elected Members recognise that officers have the duty and right to provide appropriate professional advice, and the right to have that advice recorded, so that all elected members are fully aware of the implications of their decisions;
- (c) Officers recognise that it is the right of the elected members to take the final decisions in the light of their advice;
- (d) The provision of that advice is the principal means by which elected members can gain assurance that their decisions comply with the law and relevant standards or codes of conduct;
- (e) The advice provided by the officers should be fearless, factual, honest, objective and politically neutral;
- (f) The advice should be sensitive to the political aspirations and constraints of elected members but should not reflect, or be influenced by, those aspirations and constraints;
- (g) The advice given by officers will have the ultimate aim of serving the interests of the County Council as a whole, irrespective of whether the current emphasis of an officer's rôle is Executive, Overview and Scrutiny or Regulatory;

Information and the political perspective

- 4. For the proper functioning of the County Council as a whole, officers will normally be permitted to share information freely between themselves, irrespective of whether the current emphasis of an officer's rôle is connected with the Executive, Overview and Scrutiny or Regulatory aspects of the County Council. Where the information has been supplied/received subject to a request for party political confidentiality an officer will be permitted to share that information with other officers if he/she believes that to be necessary - for example for the purpose of verifying the legality, financial probity or procedural regularity of any proposed course of action disclosed by that information. The request for party political confidentiality will be confirmed to, and honoured by, any officers with whom the information is shared.
- 5. Appropriate and regular liaison between elected members and officers connected with the Executive and Overview and Scrutiny aspects of the County Council should avoid the relationship between Scrutiny and the Executive becoming adversarial and polarised. This liaison, combined with the politically balanced nature of Overview and Scrutiny,

should reduce the number of occasions on which it is necessary for information to be supplied by elected members to officers on a party political confidential basis at the Executive/Overview and Scrutiny level;

6. Where information is supplied to officers on a party political confidential basis, the officers will respect that confidentiality unless the officers believe that the proposed course of action appears to be in conflict with the law, or any relevant standards or codes of conduct, or would amount to an abuse of the processes of the County Council;
7. Where party political confidentiality would be maintained in accordance with the preceding subparagraph, the officers may, nonetheless, seek to persuade the elected members requesting the confidentiality to agree to that information being shared with the other political groups on the grounds that it would assist the more effective functioning of the County Council; however, in the absence of any such agreement to waive the confidentiality, the officers would continue to respect it.
8. Where there is a change in Political Administration, the officers will act in relation to the new Administration and Opposition party or parties in the same way as they did for the old; and will continue to respect any continuing party political confidentiality.

The Executive and Overview and Scrutiny

9. Given the nature and purpose of the County Council and the respective rôles of elected members and officers, it is accepted that the officers, while remaining politically neutral, will inevitably give advice on a wider range of issues and on a more regular basis to the Executive. For their part, the Executive will continue to respect the political neutrality of the officers and accept that officers are obliged to respond positively to any requests from Overview and Scrutiny for appropriate information and advice relevant to the issue being considered by Overview and Scrutiny. When a committee requests it, the Executive will provide an appropriate Lead Member to attend an overview and scrutiny meeting to explain an Executive's decision and the reasons for it.

Decisions under delegated powers

10. No executive powers will, as a matter of policy, be delegated to individual elected members, either as the Leader or as a member of the Cabinet. Although neither the Leader nor individual members of the Cabinet will have any personal delegated executive powers, they may, nevertheless, develop, a personal special interest in specific areas of County Council activity. The term "Lead Member", rather than "Portfolio Holder", is used to describe elected members with any such special interest, to avoid creating any misleading impression that the elected member concerned does have personal delegated powers.

Part 5C

The Cabinet may decide that there should be more than one Lead Member for any particular area of special interest. Equally, the Cabinet may decide not to adopt the Lead Member approach, leaving it to individual members of the Cabinet to develop their interests and relations with particular departments. Where that is the case, the term Lead Member in the following paragraphs is intended to refer to any member of the Cabinet - that is, members and officers will be expected to comply with this Protocol as if the elected members concerned were, in fact, Lead Members.

11. The rôle of a Lead Member will include:
 - (a) providing a point of reference for a chief officer who wishes to sound out the elected member perspective before taking an executive decision under powers delegated to that chief officer.
 - (b) Providing a better-informed elected member perspective and opinion on any relevant proposals before (or likely to come before) the Cabinet.
 - (c) Appearing, as appropriate, before any relevant overview and scrutiny committee on behalf of the Executive.
 - (d) Making position statements or responding to questions on the relevant area of activity, on behalf of the Executive, at any meeting of the County Council.
12. Where a chief officer volunteers (rather than is required) to consult a Lead Member before exercising his or her delegated powers, both will understand, and accept, that the final decision (and the responsibility which goes with it) remains with the chief officer; and that the process of reference to a Lead Member is not intended to operate as a clandestine delegation of power to the Lead Member.
13. The same principles apply where authority to take a decision has been specifically delegated to a chief officer “after consultation with” one or more elected members, whether Lead Member or Patch Member or both. Although the process of consultation is required by the specific delegation of authority, this does not change the fact that the process is still one of consultation with, not specific approval by, the elected member(s) concerned. If the consultation process was handled as if it was one of specific approval, then that could reasonably be regarded as tantamount to *de facto* personal delegation to the elected member concerned.
14. Since consultation alone is involved, a chief officer can, theoretically, decide to proceed with his or her proposed course of action even in the face of some degree of objection from the elected member(s) consulted. However, a wiser course of action would be for the chief officer to decline to exercise the delegated authority and refer the decision back to the body which conferred the authority on the chief officer.

15. Chief officers should be careful about the methods they use to record, for internal purposes, that the process of consultation has taken place and its result. There should be mutual trust and understanding between chief officers and Lead Members - a degree of trust which should be sufficient to render inappropriate a formalised process whereby a chief officer expects Lead Members to sign written confirmation that they have read and understood the relevant material supplied to them and that they agree its content. To adopt that kind of approach would tend to suggest that, regardless of its terms, the delegated power to make the decision had been given, in reality, to the elected member(s), rather than the chief officer.
16. In implementing any process of consultation, if the view of the Lead Member is not in conformity with the professional view of the chief officer and the difference of view is material and cannot be reconciled, then the chief officer should consider:
- (a) seeking advice from the Chief Executive, Monitoring Officer or Chief Finance Officer as appropriate; and
 - (b) referring the issue to a meeting of the Cabinet or the body which conferred the delegated power -

to protect the interests of the Lead Member, the chief officer and, ultimately, the County Council.

Guidance to Elected Members on Employment Issues

17. Although employees are not encouraged to do so, elected members may occasionally find themselves being approached by employees on matters relating to their personal circumstances as a member of the Council's staff.
18. This puts the elected member in some difficulty because they will potentially have a conflict of interest. On the one hand the member may well want to offer assistance to the employee, particularly if they reside in their electoral division. On the other hand, as a member of the County Council, all elected members have responsibilities as "the employer".
19. It is suggested in such circumstances that the member concerned should limit their role to the following:-
- listening to the nature of the issue;
 - offering advice about where the employee can get assistance and support e.g. trade union, HR staff, manager, website;
 - pointing to the various mechanisms which the Authority has in place for resolving issues and disputes with groups of employees and individuals. (These are explained below);

Part 5C

- satisfying themselves that the Council's procedures (including the Whistleblowing Procedure where appropriate) are being followed correctly in that case and receiving details of the outcome. If there is concern that this may not be the case the member should seek advice from a relevant officer (i.e. Monitoring Officer, Head of Democratic Services, Head of Human Resources).
20. Beyond the above, it would not be wise for an elected member to pursue any particular case on behalf of the employee. To do so could prejudice any procedures which are already underway and would not be in the Council's or public's interests.
21. The following procedures are available for employees to raise individual issues in relation to their employment:-
- Grievance Procedure – covers individual issues not covered by any other procedure
 - Harassment and Bullying Procedure
 - Job Evaluation Employee Procedure
 - Various appeal procedures, for example within the following:
 - Organisational Change Policy and Procedure
 - Disciplinary Policy and Procedure
 - Grievance Policy and Procedure
 - Capability Policy and Procedure
 - Probation Policy and Procedure
 - Dignity at Work Policy and Procedure
22. The Whistleblowing Procedure is available to raise issues of bad practice, possible fraud or corruption or other matters which seem to be against the interests of the public, the Council or its staff.
23. Collective issues may be raised at Departmental Joint Consultative Committees or Health and Safety Committees or the Central Negotiating and Consultative Committee or Central Health and Safety Consultative Committee as appropriate. Trade unions may refer collective issues not resolved at officer level to the Disputes Panel, which is a body of 5 elected members established to consider representations from trade unions and management and to make recommendations to the Employment Committee or Cabinet, or both, as appropriate.

[end of Part 5C]